



STATE OF NEW YORK
OFFICE OF THE ATTORNEY GENERAL

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ATTORNEY GENERAL

DIVISION OF SOCIAL JUSTICE
ENVIRONMENTAL PROTECTION BUREAU

October 9, 2024

VIA ECF

The Honorable Christian F. Hummel
James T. Foley US Courthouse
445 Broadway
Albany, NY 12207

Re: Scheduling Order for *Mulhern Gas, et al. v Mosley*
Case No. 1:23-cv-01267-GTS-CFH

Dear Judge Hummel:

Following up on today's Case Management Conference, Defendant seeks to clarify the type of motion Defendant will file on November 5, 2024. The Court referred to the motion as one for a "stay." However, as explained in the Proposed Civil Case Management Plan, Defendant intends to file a motion for judgment on the pleadings because Defendant believes the case is not currently justiciable and should be dismissed.

Defendant's scheduling proposal was that, in lieu of Defendant burdening the Court with a motion for judgment on the pleadings based on lack of justiciability, the Court should instead defer the merits briefing schedule until completion of administrative processes that would potentially make the matter justiciable. Defendant was prepared to present a filing to show just cause for dismissal without prejudice or, in the alternative, for the Court to defer briefing on the merits to avoid the need for dismissal and refile. However, by setting a schedule for Plaintiffs to file a dispositive motion on the merits by November 5, 2024, the Court effectively foreclosed the option of deferring merits briefing. Therefore, Defendant intends to file a motion for judgment on the pleadings, without any stay component, and wanted to eliminate any possible confusion about Defendant's filing in advance.

Please let us know if the Court has any questions or needs more information from Defendant.

Yours truly,

/s/Gavin G. McCabe

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